IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	:	
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AMERICAN CLASSIC VOYAGES, CO., et al.,	:	Bankruptcy Case No. 01-10954
	:	
Debtors.	:	
	:	
SCOTT HEFTA,	:	
	:	
Appellant,	:	
	:	
v.	:	Civil Action No. 02-1684-JJF
	:	Civil Action No. 03-0112-JJF
	:	**CONSOLIDATED ACTIONS**
AMERICAN CLASSIC VOYAGES, CO., et al. and OFFICIAL COMMITTEE OF UNSECURED CREDITORS,	:	
	:	
Appellees.	:	

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Attorneys for The Official Committee of Unsecured Creditors of American Classic Voyages, Co., et al.

MEMORANDUM OPINION

August 26, 2003
Wilmington, Delaware

Farnan, District Judge.

Before the Court is an appeal by Appellant Scott Hefta from three Orders of the United States Bankruptcy Court for the District of Delaware: (1) the October 1, 2002 Order denying (i) the Motion For Relief From Automatic Stay, filed on August 1, 2002, and (ii) the Motion Of Scott Hefta For Enlargement Of Time To File Proof Of Claim ("the Enlargement Motion") filed on or about August 8, 2002; (2) the November 26, 2002 Order denying the Motion Of Claimant, Scott Hefta, To Reconsider And Vacate Order Denying Motion Of Claimant For Enlargement Of Time To File Proof of Claim And Motion For Relief From The Automatic Stay ("the Reconsideration Motion"); and (3) the December 6, 2002 Order sustaining the Debtors' Omnibus Objection seeking to expunge Appellant's proof of claim as a late filed claim. Appellant filed a single Notice of Appeal for the October 1 and November 26 Orders, and a second, separate Notice of Appeal for the December 6 Order. The parties later stipulated to the consolidation of these appeals. For the reasons discussed, the Court will affirm the Bankruptcy Court's decisions.

I. The Parties' Contentions

By his appeal, Appellant contends that the Bankruptcy Court erred in denying Appellant's request to enlarge the time for him to file a proof of claim for injuries he allegedly sustained as a seaman aboard one of the vessels owned and operated by the Debtors. Through his attorney, Appellant notified the Debtors of his injury, and when the Debtors initiated Chapter 11

proceedings, Appellant's attorney received a notice advising creditors that they must file their proofs of claims with the Claims Agent appointed by the Court, Logan & Company ("Logan" or "Claims Agent").

By letter dated February 7, 2002, Appellant's attorney requested a "Proof of Claim" from Logan and apprised Logan of Appellant's alleged injury and resulting claim against the Debtors. Although Appellant's counsel timely received a notice establishing the Bar Date of April 30, 2002, counsel filed the Notice in his client files without taking action on it. Appellant's counsel maintained that he thought he would receive a response to his February 7, 2002 letter directly from Logan.

When no response was received, Appellant's counsel filed a Motion For Relief From The Automatic Stay on August 1, 2002. The Debtors objected to the Motion on the grounds that the Bar Date had passed on Appellant's claim. Upon realizing that the Bar Date had passed for his claim, Appellant filed a Motion For Enlargement Of Time asserting excusable neglect and arguing, in the alternative, that the February 7, 2002 letter of Appellant's counsel was an informal proof of claim. Appellant's Enlargement Motion was denied, and his subsequent Reconsideration Motion was likewise denied. The Debtors then filed a Fifth Omnibus Objection To Claims seeking to expunge Appellant's proof of claims. This Objection was sustained by the Bankruptcy Court in accordance with the Court's prior rulings in this case that

Appellant had failed to file a valid formal or informal proof of claim.

By his appeal, Appellant maintains that the Bankruptcy Court improperly failed to recognize his counsel's February 7, 2002 letter to the Claims Agent as an informal proof of claim. Appellant contends that the February 7, 2002 letter meets the five requirements for filing a proof of claim, including the requirement that the letter be filed with the Bankruptcy Court, because the letter was sent to the Claims Agent appointed by the Bankruptcy Court. Appellant does not appeal the Bankruptcy Court's determination that his counsel's failure to file the proof of claim was not excusable neglect.

In response, the Debtors and the Committee (collectively "Appellees") contend that the February 7, 2002 letter was not a valid, informal proof of claim for two reasons. First, Appellees contend that the letter was not filed with the Bankruptcy Court, because it was filed with the Claims Agent and not styled as a pleading filed with the Bankruptcy Court. Second, Appellees maintain that the letter did not include all of the information that would be required by the proof of claim form. In the alternative, Appellees contend that even if the Court were to reverse the Bankruptcy Court's orders denying the Motion For Enlargement Of Time and the Reconsideration Motion, the Court should still affirm the Bankruptcy Court's Order denying relief from the stay. To this effect, Appellees maintain that

Appellant's relief from stay motion is premature, because Appellant has not yet complied with any of the alternative dispute resolution procedures implemented by the Bankruptcy Court to liquidate disputed personal injury claims.

II. Standard of Review

The Court has jurisdiction to hear an appeal from the Bankruptcy Court pursuant to 28 U.S.C. § 158(a). In undertaking a review of the issues on appeal, the Court applies a clearly erroneous standard to the Bankruptcy Court's findings of fact and a plenary standard to its legal conclusions. See Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the Court must accept the Bankruptcy Court's finding of "historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the trial court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991) (citing Universal Mineral, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 101-02 (3d Cir. 1981)). The appellate responsibilities of the Court are further understood by the jurisdiction exercised by the Third Circuit, which focuses and reviews the Bankruptcy Court decision on a de novo basis in the first instance. In re Telegroup, 281 F.3d 133, 136 (3d Cir. 2002).

III. DISCUSSION

After reviewing the decisions of the Bankruptcy Court under a plenary standard of review, the Court concludes that the Bankruptcy Court correctly concluded that the February 7 letter by Appellant's counsel to the Debtors' Claim Agent did not satisfy the criteria necessary to constitute an informal proof of claim. Courts in this Circuit have applied five criteria in assessing informal proofs of claim:

> (1) it must be in writing; (2) it must contain a demand by the creditor on the estate; (3) it must express an intent to hold the debtor liable for the debt; (4) it must be filed with the bankruptcy court; and (5) allowance of an informal proof of claim is equitable based on the facts of the case.

In re Joseph P. Petrucci, 256 B.R. 704, 706 (Bankr. D.N.J. 2001) (stating that "the cases within the Third Circuit require all five elements to be met"); see also Agassi v. Planet Hollywood Int'l, Inc., 269 B.R. 543, 551 (D. Del. 2001) (applying the Petrucci test and concluding that an objection to a motion to assume or reject a contract was a valid, informal proof of claim).

In this case, the parties' dispute centers on the fourth criteria, i.e. whether the writing was filed with the Bankruptcy Court. Appellant first contends that its counsel's letter was filed with the Bankruptcy Court, because it was sent to the Claims Agent appointed by the Bankruptcy Court. Appellees maintain that sending a letter to the Claims Agent is not akin to

filing a formal pleading in the Bankruptcy Court, and its Claims Agent was never authorized to receive pleadings on behalf of the Bankruptcy Court. The Court agrees that the mailing of a letter to the Claims Agent is insufficient to qualify as a pleading filed in the Bankruptcy Court. The Bankruptcy Court's Local Rules set forth detailed procedures for bankruptcy filings and the application of these procedures to the instant case was stressed in the Debtors' Notice Of (A) Commencement Of Chapter 11 Bankruptcy Cases, (B) Automatic Stay and (C) First Meeting Of Creditors And Equity Security Holders (the "Commencement Notice"). The Commencement Notice further highlighted the distinction between pleadings and proofs of claim, noting the separate requirements for pleadings, including submission to the Clerk's Office and service on the Debtors and their counsel. (Commencement Notice A-5, A-6). Thus, the Court concludes that the Bankruptcy Court correctly concluded that the letter sent to Logan was not a pleading filed with the Bankruptcy Court.

Appellant next contends that an informal proof of claim need not be a pleading filed with the Bankruptcy Court. To this effect, Appellant contends that the Petrucci five part test distorts the requirements originally set forth by the Third Circuit for recognizing informal proofs of claims in In re Thompson, 227 F. 981 (3d Cir. 1915). In Thompson, the Third Circuit addressed whether a letter to the attorney for a receiver

met the criteria for constituting an informal proof of claim. Appellants correctly point out that the Thompson court set forth only two criteria for an informal proof of claim: (1) that it make a demand against the estate; and (2) that it demonstrate the creditor's intention to hold the estate liable. Id. at 983. However, the Court also recognizes that the jurisprudence that has developed since Thompson in this area has required the writing to be a pleading filed in the Bankruptcy Court. Petrucci, 256 B.R. at 706; In re Gary Grubb, 169 B.R. 341, 347 (Bankr. W.D. Pa. 1994) (recognizing that an informal proof of claim must be in the form of a pleading filed with the Bankruptcy Court); Hatzel & Buehler, Inc. v. Station Plaza Associates, L.P., 150 B.R. 560, 561 (Bankr. D. Del. 1993) (holding that the claimant's counterclaim met the criteria of an informal proof of claim because it was a pleading filed with the Bankruptcy Court); Wilbert Winks Farm, Inc., 114 B.R. 95, 97 (Bankr. E.D. Pa. 1990) (holding that an involuntary petition against the debtor qualified as informal proof of claim, because it is "the archetype of a pleading filed with the Bankruptcy Court"); In re Ungar, 70 B.R. 519, 521 (Bankr. E.D. Pa. 1987). The Third Circuit has not had occasion to review these cases, and the Court is reluctant to depart from the long line of these cases without

further guidance from the Third Circuit.[1] As the Bankruptcy Court recognized, this case is a "close-call," and it may well be that the Third Circuit will wish to restore the Thompson test to its original two part form. At this juncture, however, the Court agrees with the Bankruptcy Court's assessment that "the cases . . . seem to suggest that it needs to be a Motion for Relief, a counter claim, some formal pleading that raises the issue. And except in rare instances where we have pro se Debtors, or maybe pro se Creditors, we just don't generally accept letters as constituting formal pleadings." (D.I. 12 at A-81). As the Bankruptcy Court recognized, the writing of a letter to the Claims Agent saying "'I have a claim against the Debtor'" and requesting the form to file a formal proof of claim, is insufficient to "accomplish[] the task." (D.I. 12 at A-80). Accordingly, the Court agrees with the assessment and reasoning of the Bankruptcy Court and will affirm the decisions of the

[1] The Court recognizes that another court in this Circuit has recently questioned the apparent departure from the two-part test of Thompson. However, the case did not turn on the question of whether the document was a pleading filed in the Bankruptcy Court, the court's comments were purely dicta, and the decision was unreported. See In re Cavalier Industries, Inc., 2003 WL 716291, *2 (Bankr. E.D. Pa. Feb. 6, 2003). Accordingly, the Court is reluctant to base its decision on Cavalier and is persuaded that the jurisprudence developed since Thompson should be followed absent further guidance from the Third Circuit on this issue.

Bankruptcy Court denying the Enlargement Motion[2] and the Reconsideration Motion, and sustaining the Debtors' Fifth Omnibus Objection on the grounds that Appellant's failed to file a valid formal or informal proof of claim.

IV. CONCLUSION

For the reasons discussed, the Court will affirm the decisions of the Bankruptcy Court dated October 1, 2002, November 26, 2002, and December 6, 2002.

An appropriate Order will be entered.

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[2] Part of the Enlargement Motion included Appellant's Motion To Lift The Automatic Stay. The Court believes that the Motion To Lift The Automatic Stay is rendered moot by the Court's decision regarding the failure of Appellant to file a valid formal or informal proof of claim. To the extent that the Lift Stay Motion and the related Reconsideration Motion on that point might remain an issue, the Court concludes that the Bankruptcy Court correctly denied the Motions because of Appellant's failure to file a valid formal or informal proof of claim, as well as the failure of Appellant to comply with the procedures set in place for liquidating personal injury claims against the Debtors.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

IN RE:	:	Chapter 11
AMERICAN CLASSIC VOYAGES, CO., et al.,	:	Bankruptcy Case No. 01-10954
Debtors.	:	
SCOTT HEFTA,	:	
Appellant,	:	
	:	**CONSOLIDATED**
v.	:	Civil Action No. 02-1684-JJF
	:	Civil Action No. 03-0112-JJF
AMERICAN CLASSIC VOYAGES, CO., et al.,	:	
Appellees.	:	

FINAL ORDER

At Wilmington, this 26th day of August 2003, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED THAT:

1. The October 1, 2002 Order denying (i) the Motion For Relief From Automatic Stay, filed on August 1, 2002, and (ii) the Motion Of Scott Hefta For Enlargement Of Time To File Proof Of Claim ("the Enlargement Motion") filed on or about August 8, 2002 is AFFIRMED.

2. The November 26, 2002 Order denying the Motion Of Claimant, Scott Hefta, To Reconsider And Vacate Order Denying Motion Of Claimant For Enlargement Of Time To File Proof Of Claim and Motion For Relief From The Automatic Stay ("the

Reconsideration Motion") is AFFIRMED.

3. The December 6, 2002 Order sustaining the Debtors' Omnibus Objection seeking to expunge Appellant's proof of claim is AFFIRMED.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE